

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**IN RE: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION**

**MDL No. 1456**

**Civil Action No. 01-CV-12257-PBS**

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**THIS DOCUMENT RELATES TO:  
International Union of Operating Engineers,  
Local No. 68 Welfare Fund v. AstraZeneca PLC  
Et al. Civil Action No. 04-11503-PBS**

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**Hon. Patti B. Saris**

**EXPEDITED MOTION TO HAVE DEFENDANT'S MOTION TO QUASH  
CONSIDERED ON THE PAPERS OR, ALTERNATIVELY, FOR CONTINUANCE**

Stanley C. Hopkins moves this Court pursuant to Local Rules, D. of Mass., 7.1(d) and (f) to rule on his Motion to Quash, on the papers without a hearing and to excuse the undersigned from attendance at the 2:00 p.m. November 9, 2005, hearing. Alternatively, Stanley C. Hopkins moves this Court pursuant to Local Rule 40.3 to grant a continuance of that hearing.

**MEMORANDUM OF LAW**

**Factual Background**

Dr. Hopkins is an individual physician who was sued in New Jersey class action. That class action has been subsumed in this MDL, although Dr. Hopkins does not appear to be a named defendant in the MDL. Undersigned counsel for Stanley Hopkins was subpoenaed for deposition, *duces tecum*, on the issue of fraudulent joinder, and filed a motion to quash that subpoena. In that motion, counsel for Dr. Hopkins did not request a hearing, and does not want a hearing.

This Court may consider motions on the pleadings, without a hearing. Local Rule, D. Mass., 7.1(f). Counsel for Dr. Hopkins never requested Oral Argument on his Motion to Quash. *See* Local Rule, D. Mass., 7.1(d) (counsel may request Oral Argument.) Undersigned counsel for Dr. Hopkins understands there are several issues to be heard on that date, only one of which is relevant to Dr. Hopkins. **Dr. Hopkins affirmatively declines a hearing, concedes to having the issue decided on the papers filed, and respectfully requests this court excuse undersigned counsel from the hearing scheduled for November 9, 2005,** in this matter to avoid a severe financial hardship to Dr. Hopkins, who has in any event already been deposed in this case and could have been asked any questions relevant to this issue at that time. (Dr. Hopkins is currently unreachable because of Hurricane Wilma which devastated South Florida, where Dr. Hopkins lives and works.)

Alternatively, this Court may grant a continuance for good cause. Local Rule, D. Mass, 40.3. Undersigned counsel requests a continuance of the currently-scheduled hearing. Counsel is set to begin a week-long arbitration, beginning November 5, 2005, in the case of *Gary Phillips and Joanne Phillips, Petitioners v. John J. Silver, et al.*, Case No. 33-115 000038 03, which arbitration has been so set since well before the Court set this hearing.

**LOCAL RULE, D. MASS, 7.1(a)(2), CERTIFICATION**

Counsel for Dr. Hopkins has conferred with counsel for AstraZeneca, who has not responded with his concurrence in, or opposition, to this motion.

**CONCLUSION**

For the foregoing reasons, this Court should consider the Motion to Quash on the papers submitted and excuse undersigned counsel from the hearing currently scheduled for November 9,

2005. Alternatively, undersigned requests the Court grant a continuance until after November 12, 2005. Undersigned requests expedited consideration.

Dated: November 2, 2005

Respectfully submitted,

/s/ Jack E. Fernandez  
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Counsel for Defendant Stanley C.  
Hopkins, M.D.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2nd day of November, 2005, I electronically filed with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to counsel of record.

/s/ Jack E. Fernandez  
Attorney